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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Flehr Hohbach Test Albritton & Herbert LLP  
Four Embarcadero Center - Suite 3400  
San Francisco, CA 94111-4187

EXAMINER

BEISNER, WILLIAM H

ART UNIT

PAPER NUMBER

1744

DATE MAILED: 04/09/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

111F-14

# Office Action Summary

Application No.

09/493,741

Applicant(s)

LEBL, MICHAL

Examiner

William H. Beisner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 27-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 27-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 24 January 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10. 6) ☐ Other:

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statement filed 24 Sept. 2001 has been considered and made of record.

### ***Drawings***

2. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 24 Jan. 2002 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

### ***Priority***

3. Applicant's claim of priority under 35 USC 119(e) is improper for the following reasons:

The first line of the specification should recite that the instant application claims benefit of U.S. Provisional Application 60/118,377 filed January 28, 1999 rather than claiming the instant application as a continuation.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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5. Claims 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells et al.(US 5,707,331).

The reference of Wells et al. discloses a centrifuge (2) with a rotor (30) which is designed so as to hold reaction vessels (8) at a tilt away from the axis of rotation (See Figure 3a). The device includes a waste reservoir (6) and a tube (7).

6. Claims 27, 28 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by American Hospital Supply (GB 1 241 539) or Shigeru (JP 61-139756).

The reference of American Hospital Supply discloses a centrifuge device (See Figure 9) which includes a rotor (13) which holds reaction vessels (26) in a tilted position away from the axis of rotation. The reaction vessels are communicated with a waste reservoir (65) with a tube (65). The rotor includes a liquid distribution system (39) and the centrifuge is controlled by computer (36).

7. Claims 27 and 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Shigeru (JP 61-139756).

The reference of Shigeru discloses a centrifuge device (See Figure 3) which includes a rotor (1) which holds reaction vessels (3) in a tilted position away from the axis of rotation. The reaction vessels are communicated with a waste reservoir (14). The rotor includes a liquid distribution system (10) and the centrifuge is controlled by computer (11).

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8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tamai (JP 64-83153) in view of either Wells et al.(5,707,331) or American Hospital Supply (GB 1 241 539) or Shigeru (JP 61-139756).

The reference of Tamai discloses a centrifuge device with a rotor (2) which supports a plurality of microplate vessels (3). The device includes a waste reservoir (30) to hold liquids expelled from said reaction vessels.

While the reference of Tamai discloses holding a plurality of microtiter plates, the claims differ by reciting that the plates are held in a tilted position away from the axis of rotation of the rotor.

The reference of Wells et al. discloses that it is known in the art to provide a vessel in a tilted position so as to empty the vessel by rotation of the rotor (See column 5, lines 52-65 and Figure 3a).

The reference of Shigeru discloses that it is known in the art to provide a vessel in a tilted position so as to empty the vessel by rotation of the rotor (See the English Language Abstract and Figure 3).

The reference of American Hospital Supply discloses that it is known in the art to empty a vessel being centrifuged by allowing the vessel to tilt "outward" (See page 4, lines 30-40 and Figure 9).

In view of either of these teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the holder of the primary

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reference so as to allow the vessels to tilt outward for the known and expected result of ensuring the emptying of the wells (44) as is taught by the secondary references and required of the primary reference of Tamai.


***Response to Arguments***

10. Applicant's arguments with respect to claims 27-32 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Beisner whose telephone number is 703-308-4006. The examiner can normally be reached on 6:40am-4:10pm; alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J. Warden can be reached on 703-308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
William H. Beisner  
Primary Examiner  
Art Unit 1744

WHB  
April 7, 2002